

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart D – ACEP-ALE General Information and Eligibility Requirements

528.30 Overview of the Agricultural Land Easement (ALE) Component

A. Introduction

- (1) The purposes of ACEP-ALE are to—
 - (i) Protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and
 - (ii) Protect grazing uses and related conservation values by restoring or conserving eligible land.
- (2) To achieve these purposes, NRCS is authorized to facilitate and provide cost-share assistance through ALE-agreements, as defined in subpart F, section 528.50 of this part, with eligible entities including State or local governments, Indian Tribes, and certain nongovernmental organizations for the purchase of agricultural land easements on eligible land from eligible landowners. This includes entering into ALE-agreements to provide cost-share assistance for buy-protect-sell transactions, as described in section 528.30E below.
- (3) The duration of each agricultural land easement will be in perpetuity or the maximum duration allowed under State law.
- (4) To participate in ACEP-ALE, entities must submit applications to NRCS and NRCS must determine the eligibility of the entity, the eligibility of each parcel of land offered for enrollment, and the payment eligibility of the landowners of each parcel of land.
- (5) Once determined to be eligible to receive assistance under this part, an entity participating in ACEP-ALE is identified by NRCS as an “eligible entity.” If an eligible entity is certified by NRCS under subpart H of this part, the eligible entity may also be referred to as a “certified entity.” The term eligible entity refers to both a certified eligible entity or a noncertified eligible entity unless otherwise specified. A noncertified eligible entity may submit a request to NRCS to become certified (see subpart H of this part).
- (6) Eligible entities with applications selected for funding must enter into an ALE-agreement with NRCS in order to receive ACEP assistance. Under the ALE-agreement, the Federal share of the cost of an agricultural land easement or other interest in eligible land will not exceed 50 percent of the fair market value of the agricultural land easement as determined using an approved methodology described in subpart F, section 528.53 of this part. The eligible entity must provide a non-Federal share that is at least equivalent to the Federal share unless otherwise specified in this part.
- (7) Unless otherwise specified, the term “ALE-agreement” as used in this part includes ACEP-ALE cooperative agreements, ACEP-ALE grant agreements, and ACEP-ALE program agreements, including any such agreement that may be used for a buy-protect-sell transaction. ACEP-ALE grant agreements may only be used with certified eligible entities.

B. Program Objectives

The objective of ACEP-ALE is to facilitate the purchase by eligible entities of agricultural land easements on eligible lands that protect natural resources and the agricultural nature of the land, promote agricultural viability for future generations, and permit the landowner the right to continue agricultural production and related uses subject to the terms of the easement.

C. Authority

This part contains specific policy guidance for ACEP-ALE implementation consistent with subtitle H of the Food Security Act of 1985 and 7 CFR Part 1468. Additional policy guidance for implementation of ACEP-ALE includes, but is not limited to, the following:

- (i) Title 180, National Planning Procedures Handbook (NPPH), Part 600
- (ii) Land Evaluation and Site Assessment (LESA) Handbook (1983 edition)
- (iii) LESA Guidebook (1994 Edition)
- (iv) Title 310, General Manual (GM), Part 402, “Land Evaluation & Site Assessment System”
- (v) Title 180, National Food Security Act Manual (NFSAM)
- (vi) Title 120, GM, Part 401, Subpart I, “NRCS National Headquarters Grants and Agreements Review and Approval Process”
- (vii) Title, 190, GM, Part 410, Subpart A, “Compliance with NEPA, Procedures for NRCS-Assisted Programs”
- (viii) Title 430, National Soil Survey Handbook (NSSH), Parts 600-659

D. Uses of NRCS ACEP-ALE Funds

- (1) NRCS, on behalf of the Commodity Credit Corporation (CCC), may enter into an ALE-agreement with eligible entities to provide cost-share assistance for their purchase of agricultural land easements that protect agricultural lands from conversion to nonagricultural uses or to protect grazing lands and related conservation values. NRCS may enter into grant agreements with certified eligible entities because there is less-than-significant Federal Government involvement in the acquisition of agricultural land easement by certified eligible entities.
- (2) NRCS may only provide ACEP-ALE funds to an eligible entity for the Federal share of the fair market value of the agricultural land easement.
- (3) NRCS may use ACEP-ALE funds for its own responsibilities under the program, including technical assistance, technical review appraisals, and related costs. NRCS must not provide any ACEP-ALE funds to an eligible entity for any of the eligible entity’s costs except for the Federal share of the easement acquisition cost as specified above. This prohibition includes, but is not limited to, the eligible entity costs for appraisals, areawide market analysis, legal surveys, access, title clearance or title insurance, legal fees, phase I environmental site assessments, closing services, development of agricultural land easement plans or component plans by the eligible entity, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.
- (4) When required, NRCS may obtain or conduct its own technical and administrative review of appraisals, areawide market analysis, or other easement valuation reports and necessary hazardous materials reviews. NRCS will obtain these reviews through an appropriate agreement or procurement method and following proper rules and procedures.
- (5) NRCS may provide direct technical assistance under ACEP to develop highly erodible land (HEL) conservation plans in accordance with 7 CFR Part 12 on those portions of parcels that contain highly erodible cropland or, if requested, to assist in

compliance with the terms and conditions of agricultural land easements. Other NRCS conservation planning assistance (e.g., general NRCS conservation planning as opposed to the development of HEL conservation plans) may only be provided through conservation technical assistance if requested by the landowner and must follow standard NRCS planning procedures. For enrollments under the 2014 Farm Bill only, NRCS may continue to provide direct technical assistance under ACEP to landowners and eligible entities to develop an agricultural land easement plan or component plans.

- (6) NRCS is not authorized to use ACEP funding to support agricultural lands protection strategies that do not result in the purchase of an agricultural land easement, such as agricultural use taxation programs, voluntary agricultural district programs, agricultural zoning programs, or transfer of development rights programs that do not rely on easements.

E. ACEP-ALE Transaction Types

- (1) Agricultural land easements may be acquired through the following transaction types:
 - (i) A standard transaction, wherein NRCS enters into an ALE-agreement to provide cost-share assistance to the eligible entity for the purchase of an agricultural land easement by the eligible entity from the eligible landowner of eligible private or Tribal lands. Standard ACEP-ALE transactions involve eligible land, that at the time of application is owned by the eligible landowner and is subject to a written pending offer for the purchase of an agricultural land easement by the eligible entity.
 - (ii) A buy-protect-sell transaction, wherein NRCS enters into an ALE-agreement to provide cost-share assistance for the purchase of an agricultural land easement on eligible private or Tribal agricultural land that is owned or is being purchased by an eligible entity on a transitional basis for the purposes of securing the long-term protection of natural resources and the agricultural nature of the land and ensuring timely transfer of the ownership of the land to a qualified farmer or rancher subject to the additional requirements specific to buy-protect-sell transactions. There are two types of buy-protect-sell transactions:
 - Preclosing Transfer.—Wherein the eligible entity will transfer fee title ownership of the land to a farmer or rancher at or prior to closing on the agricultural land easement and the eligible entity will hold the agricultural land easement prior to receiving the Federal share.
 - Postclosing Transfer.—Wherein the eligible entity will transfer fee title ownership of the land to a farmer or rancher not later than 3 years after closing on the agricultural land easement, unless an extension of such time has been authorized by NRCS subject to specific requirements.
- (2) At the time of application, the eligible entity must specify the transaction type that will be used to acquire the agricultural land easement on the individual parcel. All transaction types must meet the requirements of this part; buy-protect-sell transactions must also meet the additional requirements set forth in the supplemental guidance specific to buy-protect-sell transactions.

528.31 ACEP-ALE Application Process and Eligibility Overview

A. NRCS accepts ACEP-ALE applications on a continuous basis. At the discretion of the State conservationist and in coordination with any required national application cutoff dates, States may establish and advertise one or more application cutoff dates during the fiscal year. Complete applications received prior to the cutoff date will be reviewed, ranked, and

considered for funding. Complete applications received after the cutoff date may be considered in the next application period.

B. NRCS evaluates and selects parcels for funding through four primary steps, as follows:

- (1) Reviewing application information and supporting documentation provided by the entity to determine entity eligibility, land eligibility, and landowner eligibility.
- (2) Conducting onsite land eligibility and ranking determinations.
- (3) Selecting parcels for funding based on fund availability, eligibility, ranking priority, and waiver determinations, preliminary reviews of title and access sufficiency, and evaluations of onsite or offsite conditions that would preclude or interfere with achieving program purposes.
- (4) Entering into ALE-agreements with eligible entities, identifying parcels selected for funding associated with such ALE-agreements, and obligating ACEP-ALE funds for the purchase of agricultural land easements on the identified parcels.

C. Applications for Cost-Share Assistance

- (1) Entities applying for cost-share assistance must submit the following:
 - (i) Entity application (Form NRCS-CPA-41, “Entity Application for an ALE Agreement” or successor form) and required supporting documentation.
 - (ii) Parcel sheet (Form NRCS-CPA-41A, “Parcel Sheet for Entity Application for an ALE Agreement” or successor form) and required supporting documentation for each parcel.
 - (iii) Clear evidence of the landowner’s current legal ownership of the entire offered acreage, such as a recorded deed of ownership of the eligible land or a fully executed purchase agreement wherein the eligible landowner has agreed to purchase the eligible land.
 - (iv) Copy of the evidence of the landowner’s means of physical and legal access to the easement area as described in subpart G, section 528.62B of this part.
 - (v) Copy of the written pending offer to acquire an agricultural land easement on the parcel identified in the application, or for buy-protect-sell transactions evidence that the land is owned by or in the process of being purchased by the eligible entity.
 - (vi) Application items identified in subpart E of this part.
- (2) Eligible entities must identify at the time of application the estimated costs and anticipated sources that will comprise the non-Federal share for each parcel (see subpart E, section 528.43 of this part, for further details on contribution requirements).
- (3) Each eligible entity that will hold an ACEP-ALE funded easement and each legal entity that will be identified as a co-holder of an ACEP-ALE funded easement must—
 - (i) Provide information to the Farm Service Agency (FSA) for entry into the Service Center Information Management System (SCIMS).
 - (ii) Provide and maintain current registration in the Dun and Bradstreet Data Universal Numbering System (DUNS).
 - (iii) Meet the Central Contractor Registration (CCR) requirements through the System for Award Management (SAM) or successor registry. Evidence of current active SAM registration must be checked at the time of application, at the time of obligation of funds, and at the time of each payment. Registration in SAM must be maintained for the duration of the ALE-agreement. To maintain active registration in SAM, eligible entities must renew their SAM registration annually and must not allow their registration to lapse or expire prior to renewal.

- (iv) See subpart G, section 528.60A(5) of this part, for additional information on the roles and responsibilities of co-holding entities.

528.32 Entity Eligibility Requirements and Responsibilities

A. General.—To be eligible to receive ACEP-ALE funding, an entity must be one of the eligible entity types listed in paragraph B below and must provide NRCS sufficient evidence of their ability to meet the requirements and responsibilities of an eligible entity.

B. Types of Entities that are Eligible.—To be eligible, an entity must be one of the following:

- (1) An agency of any State or local government or Indian Tribe (including a farmland protection board or land resource council established under State law).
- (2) A nongovernmental organization that certifies that it is—
 - (i) Organized for and, at all times, since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986 (IRC).
 - (ii) An organization described in section 501(c)(3) of the IRC that is exempt from taxation under section 501(a) of the IRC.
 - (iii) Described in section 509(a)(1) or (2) of the IRC is described in section 509(a)(3) of the IRC and is controlled by an organization described in section 509(a)(2) of the IRC.
 - The clauses under section 170 of the IRC address the following:
 - The preservation of land areas for outdoor recreation by, or the education of, the general public.
 - The protection of a relatively natural habitat of fish, wildlife, plants, or similar ecosystems.
 - The preservation of open space (including farmland and forest land) where such preservation is—
 - For the scenic enjoyment of the general public.
 - Pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit.
 - The preservation of a historically important land area or a certified historic structure.
 - Section 501(c)(3) of the IRC addresses corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
 - Sections 509(a) (1), (2), and (3) of the IRC include churches, educational organization, and medical organizations.

- (3) A Tribal entity is a federally recognized “Indian Tribe” as defined by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. Section 450b(e)), i.e., “federally recognized Tribes.” The Bureau of Indian Affairs (BIA) publishes annually in the Federal Register a list of Indian Tribes that are identified as federally recognized Indian Tribes. Indian Tribes that are not federally recognized may qualify under nongovernmental organization status described above.

C. Entity Eligibility Requirements

- (1) To participate in the ACEP-ALE, the entity applying for such participation must be determined by NRCS to meet the eligible entity requirements. Therefore, entities must provide as part of the application process, sufficient documentation for the State conservationist to make a determination that the entity has—
 - (i) Authority to purchase and hold agricultural conservation easements.
 - (ii) An established agricultural land protection program that purchases conservation easements for the purpose of protecting either of the following:
 - The agriculture use and future viability and related conservation values of eligible land by limiting nonagricultural uses of that land; or
 - Grazing uses and related conservation values by restoring or conserving eligible land.
 - (iii) Demonstrated a commitment to the long-term conservation of agricultural lands.
 - (iv) The authority and capability to acquire, manage, and enforce agricultural land easements or their equivalent.
 - (v) Staff capacity (either directly or through formal agreement with other entities) dedicated to monitoring and easement stewardship.
 - (vi) The ability to satisfy the non-Federal share requirements for each parcel proposed for funding (see subpart E, section 528.43 of this part, for specific requirements).
 - (vii) The ability to meet the requirements of the program.
- (2) Entities with existing ACEP-ALE or Farm and Ranch Lands Protection Program (FRPP) agreements or easements that are delinquent or deficient in satisfying the terms of those agreements or easements may be determined ineligible for funding under ACEP-ALE until such time as the deficiencies are addressed. These deficiencies may include, but are not limited to—
 - (i) Failing to conduct monitoring or provide annual monitoring reports to NRCS or providing annual monitoring reports that are insufficient or late.
 - (ii) Existing ACEP-ALE agreements with funds remaining more than 2 years after the attachment execution date without any expenditures or actions towards closings of easements in the third year.
 - (iii) Failing to comply with the terms of the ALE or FRPP agreement.

D. Eligible Entity Responsibilities

- (1) The eligible entity must—
 - (i) Perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid agricultural land easements, including such additional actions as required for agricultural land easements acquired through an authorized buy-protect-sell transaction.
 - (ii) Procure and pay all costs related to determinations of value, due diligence, and closing.
 - (iii) Hold title to the agricultural land easements.

- (iv) Meet the requirements of the ALE-agreement and carry out all responsibilities specified in the ALE-agreement, including submitting all required documentation and requests for reimbursements, advances, or extensions by required deadlines.
- (v) Ensure that any required or agreed-to agricultural land easement plans are complete at or prior to closing and updated as necessary pursuant to applicable easement deed terms (see subpart G, section 528.63 of this part, for specific requirements).
- (vi) Provide information to the FSA for entry into SCIMS.
- (vii) Ensure DUNS and SAM registration is maintained for each eligible entity and any co-holding entities.
- (viii) Ensure any legal entities that will be identified in the conservation easement deed as a co-holder (grantee) or as a third-party right holder (not a grantee) meet the requirements applicable to such legal entities as set-forth in the terms of the ALE-agreement and described in subpart G, section 528.60A(5) of this part.
- (ix) Conduct monitoring at least annually and provide the monitoring report to the State conservationist at least annually.
- (x) Enforce the terms of the agricultural land easement.
- (xi) After consultation with and approval by NRCS, an eligible entity may assign another entity to manage and enforce the agricultural land easement. The entity assigned the management and enforcement responsibilities must have the appropriate expertise and capacity to carry out such responsibilities.

528.33 Land Eligibility

A. Land Eligibility Overview.—An onsite review by NRCS is required prior to the NRCS making a land eligibility determination. To be eligible for ACEP-ALE, land must meet each of the following criteria:

- (1) Private or Tribal land that is agricultural land, including land on a farm or ranch.
- (2) Subject to a written pending offer for purchase of an agricultural land easement by an eligible entity, or for buy-protect-sell transactions evidence that the land is owned by or in the process of being purchased by the eligible entity.
- (3) Land that meets at least one of the following criteria:
 - (i) Has prime, unique, or other productive soil;
 - (ii) Contains historical or archaeological resources;
 - (iii) Enrolling the land would protect grazing uses and related conservation values by restoring or conserving eligible land; or
 - (iv) Protecting the land will further a State or local policy consistent with the purposes of ACEP.
- (4) Land that is at least one of the following:
 - (i) Cropland;
 - (ii) Rangeland;
 - (iii) Grassland or land that contains forbs or shrubland for which grazing is the predominant use;
 - (iv) Located in an area that has been historically dominated by grass land, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;
 - (v) Pastureland; or
 - (vi) Nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development.

- (5) Land that is in an area that has access to agricultural markets for its products, infrastructure appropriate for supporting agricultural production, and other support services.
- (6) Agricultural land that faces development pressure from nonagricultural use or grassland that faces pressure of conversion to nongrassland uses.

B. Eligible Land Types.—As identified under paragraph A(3) above, the land must meet one of the four following land eligibility criteria:

- (1) Prime, Unique, or Other Productive Soil.—To meet this land eligibility criterion, the offered parcel must contain at least 50 percent prime, unique, statewide, or locally important soil. The 50 percent may be comprised of one type or a combination of such soils.
 - (i) Prime, unique, statewide, or locally important soil designations are located in NRCS State or local Field Office Technical Guides or in the NRCS Web Soil Survey and are defined as follows:
 - Prime Farmland.—Land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by NRCS. Soils that are prime if irrigated or prime if drained may be considered to meet this eligibility criterion if they are currently in the condition required to be prime and the management and maintenance of the necessary irrigation or drainage rights and capabilities are addressed in the conservation easement deed, baseline documentation report, and as applicable, the agricultural land easement plan.
 - Unique Farmland.—Land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by NRCS. It has a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed in accordance with acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR Parts 657 and 658.
 - Farm or Ranch Land of State and Local Importance.—Land in addition to prime or unique farmland, that is of statewide or local importance for the production of food, feed, fiber, forage, biofuels, or oilseed crops. The appropriate State or local government agency determines statewide or locally important farmland with concurrence from the State conservationist. Generally, these farmlands are nearly prime farmland that economically produce high yields of crops when treated and managed in accordance with acceptable farming methods. Some may produce as high a yield as prime farmland. In some States and localities, farmlands of statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance in accordance with 7 CFR Part 657.
 - For the purposes of ACEP-ALE, the term “other productive soil” includes prime farmland soils, unique farmland, or farm and ranch land of State and local importance as described above.
 - (ii) The State conservationist, with the advice of the State technical committee, may elect to increase or decrease the required percentage (50) of prime, unique,

Statewide, or locally important farmland soil for a specific area or region of the State. The State conservationist must document in a general memorandum the area or region affected, the acceptable percentage, and the basis of the increase or reduction. A copy of the general memorandum must be kept in the easement case file for each parcel determined eligible based on this criterion. The detailed explanation should document—

- The scarcity or abundance of prime, unique, and Statewide or locally important farmland soil in the area in which the minimum 50 percent requirement is modified.
 - The conservation values of the parcels that warrant protection by an agricultural land easement despite this scarcity or abundance, which may include the—
 - Agricultural viability of the farm or ranch due to size and access to markets and support infrastructure.
 - Contributions of the farm or ranch to the agricultural industry.
 - Conservation of natural resources contributing to agricultural viability in the area.
 - How the restrictions in the conservation easement deed will preserve the documented conservation values.
- (iii) The determination of whether the land contains prime, unique, Statewide or locally important soils is based on the NRCS designations made using the criteria and procedures in the most current version of 430-NSSH. Third-party submissions of soil designations are not acceptable under ACEP-ALE, unless the designation has been verified, updated, and incorporated into the official soil survey data in accordance with the most current 430-NSSH procedures.
- (2) Historical or Archaeological Resources
- (i) To meet this land eligibility criterion, parcels containing historical or archaeological resources may be eligible for ACEP-ALE, the historical or archaeological sites must be on a farm or ranch to be enrolled and be—
- Listed in the National Register of Historic Places (established under the National Historic Preservation Act (54 U.S.C. Section 302101 et seq.)), including traditional cultural properties as defined in National Register Bulletin 38.
 - Formally determined eligible for listing in the National Register of Historic Places (by the State historic preservation officer (SHPO), Tribal historic preservation officer (THPO), or the Keeper of the National Register.
 - Formally listed in a State or Tribal register of historic places.
 - Included in the SHPO or THPO's inventory with written justification as to why it is eligible for the National Register of Historic Places.
- (ii) For parcels determined eligible based on containing historical and archaeological resources, the following requirements must also be met:
- The agricultural land easement deed must address the protection of the historical or archaeological resources as required by Secretary of the Interior's "Standards for the Treatment of Historic Properties."
 - The deed must identify at least one grantee or a third party with designated monitoring responsibilities that has experience in managing, monitoring, and enforcing historical or archaeological resources.
- (3) Protection of Grazing Uses and Related Conservation Values.—To meet this land eligibility criterion, the enrollment of such land must result in the protection of

grazing uses and related conservation values by restoring or conserving eligible land. Such land must be one of the following:

- (i) Grassland, rangeland, pastureland, land that contains forbs, or shrubland for which grazing is the predominant use.
- (ii) Located in an area historically dominated by grassland, forbs, or shrubland, and the State conservationist, with advice from the State technical committee, determines to be compatible with grazing uses and related conservation values, and the grassland, forb, or shrubland vegetative communities historically found on the site have been restored or the eligible entity has a valid, funded plan for the restoration of such vegetative communities in place prior to closing, and either of the following apply to the enrollment of such land:
 - Could or does provide habitat for animal or plant populations of significant ecological value if the land is retained in grazing uses and related conservation values
 - Would address State, regional, or national conservation priorities

Note: Technical and financial assistance funding for restoration is not available under ACEP-ALE, if restoration to reestablish the historic vegetative communities is necessary, the landowner and eligible entity must secure such planning assistance and funding outside of ACEP-ALE.

- (iii) Grassland of special environmental significance, which is defined in 7 CFR Section 1468.3 as grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to nongrassland uses or fragmentation; and the land is—
 - Rangeland, pastureland, shrubland, or wet meadows on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or is improved, naturalized pastureland, rangeland, or wet meadows.
 - And the land provides, or could provide, habitat for threatened or endangered species or at-risk species, protects sensitive or declining native prairie or grassland types or grasslands buffering wetlands, or provides protection of highly sensitive natural resources as identified by the State conservationist, in consultation with the State technical committee.

Note: The enrollment of land that meets the requirements of grasslands of special environmental significance results in the protection of related conservation values under this land eligibility criteria.

- (iv) For parcels determined eligible based on protecting grazing uses and related conservation values, the agricultural land easement deed must address the protection of those grazing uses or grassland values.
- (4) Land that Furthers a State or Local Policy.—To meet this land eligibility criterion, the State or local policy must be consistent with the purposes of ACEP-ALE and the protection of such land must further the State or local policy.
 - (i) States must document how the State or local policy is consistent with the purposes of ACEP-ALE and how preservation of the parcel is consistent with that policy. This documentation must be retained in the easement case file for each parcel.
 - (ii) For parcels determined eligible based this land eligibility criterion, the agricultural land easement deed must address the ACEP-ALE purposes that are being supported by a specific State or local policy.

C. Eligible Land Uses

- (1) As identified under paragraph A(4) above, the land must also be in one of the following uses:
 - (i) Cropland
 - (ii) Rangeland
 - (iii) Grassland or land that contains forbs, or shrubland for which grazing is the predominant use
 - (iv) Located in an area that has been historically dominated by grass land, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value as described in paragraph B(3)(ii) above
 - (v) Pastureland
 - (vi) Nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development
- (2) Forest Land Requirements.—Forest land is areas of native trees grown under natural conditions regardless of the products harvested (timber, nuts, berries, vines, mushrooms). Forest land is defined as land cover or use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater (source: National Resources Inventory Glossary).

Note: For the purposes of ACEP-ALE land eligibility, land covered by trees is considered cropland when the trees are not native species (orange groves, fruit and nut tree orchards) or native species that are cultivated (planted in rows, fertilized, and cultivated).

- (i) To be eligible for enrollment in ACEP-ALE, the nonindustrial private forest land must contribute to the economic viability of an agricultural operation or serve as a buffer to protect an agricultural operation from development, as determined by NRCS.
 - ACEP-ALE easements may contain forest land on up to two-thirds of the ACEP-ALE easement area. The State conservationist may waive the two-thirds limitation for acreage that NRCS determines is a sugar bush operation that contributes to the economic viability of the operation.
 - NRCS may contribute funds to a portion of a larger easement where the overall forest land of the easement exceeds two-thirds of the larger easement area so long as the ACEP-ALE easement is a subcomponent of the larger easement and all of the following apply:
 - The forest land on the ACEP-ALE easement is not in excess two-thirds of the ACEP-ALE easement area.
 - The deed of easement clearly identifies the portion of the easement area that is in the ACEP-ALE easement.
 - The ACEP-ALE easement is a single contiguous land parcel, though it may be traversed by a public roadway or utility easement.
 - The fair market value of the ACEP-ALE is appraised separately from the non-ACEP-ALE easement area and a separate value provided. The value of the ACEP-ALE may be reported in the same appraisal as the non-ACEP-ALE area.
 - The Federal share of the ACEP-ALE will be based on the fair market value of the ACEP-ALE only.

- Any eligible entity or landowner contribution to the purchase price of the easement area outside of the ACEP-ALE area is not used as part of the non-Federal share for the ACEP-ALE.
- (ii) For 2014 Farm Bill enrollments: if the contiguous forested acreage is the greater of 40 acres or 20 percent of the ACEP-ALE easement area, the forested acreage must have a forest management plan as a component of the agricultural land easement plan. (See subpart G, section 528.63B of this part, for additional detail.)
- (3) Incidental Land.— Incidental land includes such land as farmstead areas, other areas with agricultural buildings and infrastructure, and nonforested wetlands. The acres of incidental land must not exceed the acres of otherwise eligible land. Land that is incidental to the eligible land and that is not otherwise eligible, may be included in an ACEP-ALE easement if the State conservationist determines any of the following apply to the incidental land:
 - (i) Is necessary for the efficient administration of an agricultural land easement.
 - (ii) Significantly augments the protection of the associated farm or ranch land.
 - (iii) Contributes to the grassland functions and values and related conservation values.

D. Additional Land Eligibility Requirements

- (1) Written Pending Offer.—Eligible land must be subject to a written pending offer by an eligible entity, except as described in paragraph (2) below for a buy-protect-sell transaction.
 - (i) A pending offer is a written bid, contract, or option to convey a conservation easement for any of the following purposes:
 - Protecting agricultural productivity by limiting conversion to nonagricultural uses
 - Protecting historical or archaeological sites from destructive practices
 - Protecting grazing uses and related conservation values by restoring or conserving land
 - Furthering ACEP-ALE policy or policy consistent with the purposes of ACEP-ALE
 - (ii) The written pending offer may be extended by the eligible entity to the landowner to acquire the conservation easement or may be from the landowner to the eligible entity to sell the conservation easement. The State conservationist will determine the sufficiency of the written pending offer for the purposes of determining ACEP-ALE eligibility.
 - (iii) A written pending offer may take the form of a signed option-to-purchase agreement or other type of purchasing agreement, a letter of intent to sell the easement, an offer letter from the landowner to the eligible entity, or other similar documentation. A pending offer may document a landowner's intent to sell the easement without a commitment to a purchase price as many offers are made before the appraisals are completed.
 - (iv) Pending offers must be for a conservation easement in perpetuity or the maximum duration allowed under State law.
 - (v) A copy of the written pending offer must be provided by the entity at the time of application and must be retained in the easement case file for the individual parcel.
- (2) Buy-Protect-Sell Transaction Land Eligibility.—Private or Tribal land that otherwise meets the eligibility requirements of this part that is owned or in the process of being

purchased by an eligible entity may be determined eligible for ACEP-ALE as part of a buy-protect-sell transaction if all of the following criteria are met.

- (i) The otherwise eligible land is also subject to conditions, as determined by NRCS, that necessitate ownership of the parcel by the eligible entity on a transitional basis prior to the creation of an agricultural land easement, such as—
 - Imminent threat of development or fragmentation into parcels below the median size of farms or ranches in the county or parish as determined by the USDA’s most recent National Agricultural Statistical Survey (NASS);
 - Planned or approved conversion of grasslands to more intensive agricultural uses; or
 - Part of a documented eligible entity program to transition ownership of agricultural lands to historically underserved farmers or ranchers.
 - (ii) At the time of application, the eligible entity must provide NRCS evidence that the eligible entity either—
 - Owns the land; or
 - Is in the process of actively purchasing the land. Such evidence may include a valid purchase agreement, a statement from the existing landowner that they are unwilling or unable to sell a conservation easement themselves, or sufficient funds to complete the purchase of the land.
 - (iii) The eligible entity is able to meet all applicable ACEP-ALE general requirements and all specific provisions related to buy-protect-sell transactions identified in this part and supplement guidance specific to buy-protect-sell transactions.
- (3) **Agricultural Land.**—Real property is considered to be agricultural land or land in agricultural use, including land on a farm or ranch, if it is consistent with the State’s program to purchase agricultural conservation easements. If there is no State program, the definitions of a farm, ranch, or agricultural use in the State’s agricultural use tax assessment program will be used to define agricultural land.
- (i) The NRCS State conservationist must be familiar with the State’s definition of agricultural use. If the State conservationist determines the State’s definition of agriculture to be so broad that an included use could lead to the degradation of soils a farm or ranch whose use degrades the soil may be determined ineligible for ACEP-ALE. Agricultural land easement deeds will restrict the permitted agricultural uses to those that will not degrade the soils.
 - (ii) ACEP-ALE funds will not be used to purchase an easement on lands that are in an agricultural use prohibited by Federal law, even if such use is authorized under State law. The agricultural land easement deeds must include a provision that requires agricultural uses to be in compliance with all applicable laws, including Federal laws prohibiting the production of controlled substances.
- (4) **Tribal Lands.**—For the purposes of ACEP-ALE, Tribal lands are eligible under certain conditions and are those defined in 7 CFR Section 1468.3 as “acreage owned by Indian Tribes,” which means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe, or the BIA. The various interests that American Indian and Alaskan Native Tribes may hold in real property represent a unique form of property right in the American legal system. Interests in real property have been acquired by American Indian and Alaskan Native Tribes through various means, such as by aboriginal title, treaty, act of Congress, or Executive action.
- (i) Indian Tribes may apply for ACEP-ALE as an eligible entity or as a landowner.

- When the Tribe is a landowner in an eligible entity's application, the eligible entity must be independent of the Tribe and with no apparent conflicts of interest holding and managing the ACEP-ALE easement.
 - When the Tribe applies as an eligible entity it may not be a landowner of the lands to be protected, unless the application is for a buy-protect-sell transaction.
- (ii) Because of these various forms of real property interest, statutory restraints against alienation often exist. When the land offered for enrollment is held in trust by the BIA, the landowner will contact the BIA to determine whether the Tribe must receive any necessary clearances from the BIA to be considered eligible. Those contracts and clearances must accompany the application for ACEP-ALE. Tribal trust land may not be listed as a funded parcel on an ALE-agreement without the prior approval of the BIA.

528.34 Ineligible Lands

A. General.—The following lands are not eligible for cost-share assistance under ACEP-ALE. See detailed descriptions in paragraph B below for additional information on each ineligible land type.

- (1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes.
- (2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government.
- (3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, unless the land is owned on a transitional basis as part of buy-protect-sell transaction.
- (4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the ACEP-ALE.
- (5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous materials, permitted or existing rights-of-way, infrastructure development, or adjacent land uses.
- (6) Land that NRCS determines to have unacceptable exceptions to clear title or insufficient legal access.
- (7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner unless NRCS determines that the third-party rights will not harm or interfere with achieving the ACEP-ALE purposes.

B. Ineligible Lands – Detailed Descriptions

- (1) **Lands Owned by the Federal Government.**—Lands owned by an agency of the United States, other than land held in trust for Indian Tribes, are ineligible for ACEP-ALE, this includes that such lands are ineligible for a buy-protect-sell transaction except those held in trust for Indian Tribes.
- (2) **Lands Owned by a State or Local Government.**—Lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government are ineligible for ACEP-ALE, this includes that such lands are ineligible for a buy-protect-sell transaction.
- (3) **Lands Owned by a Nongovernment Organization.**—Lands owned by a nongovernmental organization whose purpose is to protect agricultural uses and

related conservation values are ineligible for ACEP-ALE, except as part of an approved buy-protect-sell transaction.

- (4) Land Subject to a Similar Easement or Deed Restriction.—Land that is already subject to an easement or other deed restriction that prevents its conversion to nonagricultural or nongrassland use is not eligible. These protections may include, but are not limited to—
 - (i) Enrollment in other USDA easement or set-aside programs, such as ACEP-Wetland Reserve Easement (WRE), the Wetlands Reserve Program (WRP), Grasslands Reserve Program (GRP), Healthy Forest Reserve Program (HFRP), and Conservation Reserve Enhancement Program (CREP) easements, Emergency Watershed Protection Program – Floodplain Easements (EWPP-FPE).
 - (ii) Lands owned by an eligible entity except as part of an approved buy-protect-sell transaction on private or Tribal lands.
 - (iii) Acreage already preserved by a transfer of development rights may not be enrolled under ACEP-ALE or used to meet any of the land eligibility requirements (e.g., 50 percent prime soils requirement). Where land is preserved through the sale of transfer of development rights, the acreage in question will not be counted as part of a landowner or eligible entity's contribution to the non-Federal share.
- (5) Adverse Onsite or Offsite Conditions.—Offsite or onsite conditions that could undermine, preclude, or interfere with achieving the purposes of the program, as determined by NRCS, render the site ineligible for ACEP-ALE. These adverse conditions may include, but are not limited to—
 - (i) The presence or potential presence of hazardous materials issues on the parcel or a neighboring site. NRCS will not enroll or provide ACEP-ALE cost-share assistance on a parcel where NRCS determines that hazardous materials issues pose an unacceptable risk, may preclude or delay the easement acquisition, or otherwise undermine the ability to achieve program purposes.
 - NRCS conducts the limited phase-I environmental site assessment (limited phase-I) to identify whether the parcel has any such hazardous materials issues. The limited phase-I includes at a minimum, an environmental record search, current landowner interviews, and an onsite visit to view present conditions (see subpart U of this part, for the “Hazardous Materials Field Inspection Checklist” and the “Hazardous Materials Landowner Interview”) and is to be completed as follows:
 - Prior to enrollment, NRCS will conduct an onsite visit of the offered parcel to initially complete the hazardous materials field inspection checklist.
 - Prior to enrollment, the landowner interview must be completed either through an in-person or over-the-phone interview with NRCS and the interviewee or may be remotely completed by the interviewee with follow-up as needed by NRCS. The interviewees must include the current landowner and as needed, others knowledgeable about the property including occupants, operators, or previous owners.
 - NRCS will procure and review the environmental record search within 180 days of identifying a parcel as selected for funding under an ALE-agreement.
 - At any time prior to closing, NRCS may conduct additional onsite visits or landowner interviews as needed to follow-up on new information or conditions, changes to the proposed easement area, or other circumstances that warrant further review of hazardous materials issues.

- If the limited phase-I identifies the need for further investigation of any hazardous materials issues associated with the offered parcel, the State conservationist will determine if further investigation should be conducted or whether sufficient information exists to determine the parcel ineligible. Further investigation conducted by or paid for by NRCS is limited to a full phase-I environmental site assessment (full phase-I) that meets the requirements of 40 CFR Part 312.
 - The eligible entity may obtain a full phase-I conducted by a qualified environmental professional and provide it to NRCS to satisfy the requirement for NRCS to conduct a limited phase-I. NRCS must still conduct an onsite visit to complete other required onsite eligibility, ranking, and due diligence activities including Landowner Disclosure Worksheet and to confirm the accuracy of information provided in the application to the extent that information is observable onsite as outlined in subpart E, section 528.40A(7) of this part, but NRCS is not required to complete its own separate limited phase-I.
 - If NRCS determines based on a limited phase-I or full phase-I that there are hazardous materials on or affecting the offered parcel or that a phase-II environmental site assessment is needed, the parcel is ineligible and will be removed from consideration for ACEP-ALE funding or from the ALE-agreement. NRCS will not reconsider the parcel unless and until the State conservationist in consultation with the Office of General Counsel (OGC) determines that the eligible entity or landowner has provided sufficient documentation that all necessary assessments have been completed and that the site has been fully remediated.
- (ii) Permitted or existing rights of way, either onsite or offsite, such as transmission lines, highways, pipelines or other existing or proposed infrastructure that introduce disturbances or risks that undermine the purposes of the easement.
- For example, transmission lines or roads fragmenting parcels offered for enrollment under grassland or grassland of special environmental significance for protection of sage grouse or other at-risk species.
 - Permitted rights of way may include documented routes approved by a government authority. Because NRCS will not knowingly interfere with the infrastructure project objectives of another agency, the land may be determined ineligible or may require reconfiguration in order to become eligible.
 - If an infrastructure project is not definitive as to its location and scope (e.g., if there is still more than one possible or proposed route at the time of obligation), then NRCS may not determine a parcel ineligible simply because an infrastructure project is under consideration in an area.
- (iii) Adjacent land uses that could impede or undermine the continued agricultural viability of the parcel, such as the close proximity of the site to an area with existing, planned, or zoned land uses of development or recreational use that will be negatively impacted or incompatible with ongoing agricultural operations or cultural practices, such as agricultural waste or pesticide application.
- (6) Unacceptable Title or Access Issues.—Because NRCS must be able to determine that ACEP-ALE funds will result in long-term agricultural protection, land that NRCS determines to have unacceptable exceptions to clear title or insufficient legal access for ACEP-ALE purposes is ineligible. NRCS, at its sole discretion, may deny funding for any parcel with unacceptable exceptions to clear title or insufficient legal

access. Such issues may include, but are not limited to, existing easements, rights of way, leases, or other encumbrances owned or leased by a third party that—

- (i) Have a high likelihood of resulting in conversion to a nonagricultural or nongrassland use.
 - (ii) Allow a scope or intensity of use that could interfere with the agricultural use and agricultural viability of the property.
 - (iii) May limit the easement holder's ability to monitor or enforce the easement.
 - (iv) Include mortgages or liens that cannot be removed or subordinated as required.
- (7) Mineral Exploration.—Land on which gas, oil, earth, hard rock, stone, gravel, geothermal, or mineral rights exploration has been leased or is owned by someone other than the landowner is ineligible under ACEP-ALE unless it is determined by NRCS that all of the following criteria are met:
- (i) The third-party rights will not harm or interfere with the conservation values or agricultural uses of the easement.
 - (ii) Any methods of exploration and extraction will have only a limited and localized impact on the easement.
 - (iii) The landowner's discretion with respect to third-party rights is limited as specified in the ALE deed pursuant to the requirements in 7 CFR Section 1468.25 and subpart G, section 528.60I of this part.

Note: NRCS may use remoteness tests, mineral assessments, or the mineral matrix for NRCS easements, or other materials for the evaluation of such third-party rights. NRCS may also review similar documents provided by the eligible entity or landowner to determine the likelihood of surface disturbance that would undermine the agricultural viability of the enrolled parcel or parcels. The ALE standard minimum deed terms contain language that addresses the landowner discretion with respect to such third-party rights.

528.35 Payment Eligibility Criteria Applied to Landowners as Beneficiary

A. General

- (1) All landowners, as listed on the current property deed or equivalent evidence of ownership documentation or as required based on the specific arrangement of an approved buy-protect-sell transaction, must be established in the SCIMS or successor systems (i.e., FSA Business Partner database) and have the following documents completed, reviewed, and filed at the USDA service center:
 - (i) A copy of the current property deed or other current evidence of ownership (hereafter ownership documentation), including a breakdown of ownership shares if applicable;
 - (ii) Form AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification" for all landowners listed on the ownership documentation, including required members of legal entities;
 - (iii) Form CCC-941, "Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information," and related forms, or equivalent successor forms as applicable, for all landowners listed on the ownership documentation, including required members of legal entities; and
 - (iv) When the landowner is a legal entity:
 - Form CCC-901, "Member's Information," or Form CCC-902, "Farm Operating Plan," or equivalent successor forms as applicable, and

- Proof that the legal entity is a legal and valid entity in the State where the land is located, usually by a certificate of good standing from the secretary of the State.
- (2) Eligibility must be determined for all landowners of record, as listed on the ownership documentation, including all individuals, legal entities, and entity members down to the individuals as required based on the “ACEP Landowner Eligibility Matrix” (see subpart U of this part for the ACEP landowner eligibility matrix). FSA is responsible for making payment eligibility determinations based on compliance with AGI provisions pursuant to 7 CFR Part 1400 and FSA policy and procedures (see FSA Handbook 5-PL) and compliance with HEL/WC provisions pursuant to 7 CFR Part 12 and FSA policy and procedures (see FSA Handbook 6-CM).
- (3) In accordance with FSA policy and procedures (see FSA Handbooks 1-CM and 11-CM), FSA will work with customers to gather any additional information needed to complete the records in the FSA systems (e.g., SCIMS, Business Partner, or successor systems). Using the information listed above, FSA will establish the specific business type for each landowner.

For land held by a trust that files using the same Social Security number as an individual, the landowner and FSA must ensure that the landowner as identified on the current evidence of ownership document is in SCIMS, or successor system, and has proper documentation of landowner eligibility.

- (4) Based on the ACEP-ALE transaction type, the payment eligibility criteria must be met as follows:
- (i) For standard ACEP-ALE transactions: All landowners of record must meet all landowner eligibility requirements in the fiscal year the parcel is identified as selected for funding on an attachment to the ALE-agreement and as specified below in paragraphs B and C of this section. If the land is sold or transferred prior to the easement closing, or if the composition of a landowner-legal entity changes prior to the easement closing, the landowner payment eligibility must be determined as described in subpart F, section 528.51D of this part.
 - (ii) For preclosing transfer buy-protect-sell transactions as described above in section 528.30E: All landowners of record to whom the fee title of the property will be conveyed by the eligible entity prior to closing on the agricultural land easement, must be eligible in the fiscal year the fee title is conveyed and as specified below in paragraphs B and C of this section. The eligible entity must provide NRCS a copy of the ownership documentation within 30 calendar days of transfer of fee title ownership. Eligible entities should encourage prospective landowners to submit the documentation needed to establish records with USDA well in advance of transferring fee title.
 - (iii) For postclosing transfer buy-protect-sell transactions as described above in section 528.30E: the person or legal entity that is or will be the landowner of record at the time the agricultural land easement closes must meet the landowner eligibility requirements in the fiscal year the ALE-agreement for the buy-protect-sell transaction is executed by all parties and as specified below in paragraphs B and C of this section. If the land is sold or transferred prior to easement closing, the payment eligibility must be determined as described in subpart F, section 528.51D of this part, or in accordance with the specific terms of the ALE-agreement for the buy-protect-sell transaction.

B. Adjusted Gross Income

- (1) All landowners, including required members of landowner-legal entities, must meet the adjusted gross income (AGI) limitations as set forth in 7 CFR Part 1400 and must file with FSA all documents required by FSA to meet AGI filing requirements. All landowners, including required members of landowner-legal entities, must file with FSA the AGI certification, Form CCC-941, “Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information,” or successor form, in accordance with FSA requirements. Landowners that are a legal entity or general partnership must also provide to FSA member information and percentage of ownership documentation (e.g., CCC-901, CCC-902, or successor forms), in accordance with FSA requirements. FSA is responsible for completing determinations on all AGI certifications.

Note: Indian Tribes are not subject to AGI provisions.

- (2) The fiscal year for which the landowners must be AGI eligible and the timing of the determination is based on the transaction type as identified in paragraph A(4) above and as described in this paragraph B. A determination of AGI eligibility must be:
 - (i) Made for the fiscal year the parcel is identified as selected for funding on an attachment to the ALE-agreement for standard ACEP-ALE enrollments and postclosing transfer buy-protect-sell transactions and prior to the execution of enrollment agreements or contracts by NRCS.
 - (ii) Made for the fiscal year the fee title is conveyed from the eligible entity to the landowner (qualified farmer or rancher) and prior to payment by NRCS for preclosing transfer buy-protect-sell transactions.
 - (iii) Updated as specified in this paragraph and in subpart F, section 528.51D of this part, for any change in ownership, change in legal entity membership or configuration, or other triggering event that occurs prior to closing.
- (3) NRCS must confirm with FSA that all landowners of record, including members of landowner-legal entities, are eligible for payment under the AGI provisions. In accordance with 7 CFR Part 1400, eligibility for payment based on the AGI provisions is applicable as follows—
 - (i) AGI-eligible and no commensurate reduction of payment will apply if either:
 - FSA has determined that all landowners as listed on the most current ownership documentation, whether a person, a legal entity, or general partnership, including all required members of a landowner-legal entity or general partnership, do not exceed the AGI limitation; or
 - FSA has determined that a landowner exceeds the AGI limitation or a landowner-legal entity is subject to a commensurate reduction in payment due to entity members that FSA has determined do not meet the AGI provisions, and the affected landowners have requested and received a waiver of the AGI limitation from NRCS.
 - (ii) AGI-eligible but a commensurate reduction of the payment of the ACEP-ALE Federal share provided to the eligible entity will apply if FSA has determined all landowners as listed on the most current ownership documentation do not exceed the AGI limitation, but such landowners that are legal entities or general partnerships include members that FSA has determined to be AGI-ineligible, including those landowner-legal entities that request and are not granted a waiver of the AGI limitation by NRCS. In such cases, payment of the Federal share must be reduced by an amount commensurate to the percent ownership in the landowner-legal entity or general partnership held by AGI-ineligible entity members.

- (iii) Ineligible and cancelled, if any landowner, as listed on the current ownership documentation, is ineligible based on the AGI provisions, including—
 - Landowners that do not file the paperwork required to complete such determinations.
 - Landowners that FSA has determined exceed the AGI limitation, including those that have requested and are not granted a waiver of the AGI limitation by NRCS.
 - Landowner-legal entities or general partnerships with members that do not meet the AGI provisions and are unwilling to accept a commensurately reduced Federal share, including those that have requested and are not granted a waiver of the AGI limitation by NRCS.
- (4) Any required commensurate reduction in the Federal share for AGI-ineligible members of an otherwise AGI-eligible landowner-legal entity should be discussed with the landowners before continuing to process the application or ALE-agreement to determine if the landowners will elect to proceed with a commensurate reduction applied, will withdraw their application, or for 2018 Farm Bill enrollments only, will request a waiver of the AGI limitation. For landowners that elect to proceed with a commensurate reduction applied, an AGI waiver may not be granted after the enrollment agreement or contract has been executed by NRCS. NRCS must identify on the obligating document the full amount of the Federal share prior to the commensurate reduction and whether a commensurate reduction must be applied to the Federal share provided by NRCS. NRCS will coordinate with the financial management staff to ensure that the full amount of the Federal share is obligated and necessary commensurate reductions to the Federal share occur at the time of payment. (See subpart U of this part for the ALE-agreement attachment.)
- (5) AGI Waiver.—2018 Farm Bill enrollments only: landowners may request a waiver of the AGI limitation from NRCS if FSA has determined a landowner exceeds the AGI limitation or if a landowner-legal entity is subject to a commensurate reduction in USDA payments due to entity members who do not meet the AGI limitation provisions. The AGI limitation may be waived for such landowners on a case-by-case basis for enrollments that will result in the protection of environmentally sensitive land of special significance in accordance with 7 CFR Part 1400. The request must be submitted in writing by the affected landowner to the appropriate State conservationist. This includes, that for AGI-eligible landowner-legal entities that are subject to a commensurate reduction due to AGI-ineligible entity members, the written AGI waiver request must be submitted by the landowner-legal entity, the individual AGI-ineligible members of such entity do not have to submit a written request for a waiver of the AGI provisions. NRCS may bundle the written AGI waiver requests received from each affected landowner of record associated with a single application for enrollment (parcel). Following the receipt of the written landowner requests, NRCS will review, process, track, and report AGI waiver requests and determinations in accordance with the requirements set forth in the supplemental guidance specific to AGI waiver procedures.
- (6) The AGI eligibility determinations completed by FSA and the subsequent issuance of any AGI waivers by NRCS, must occur prior to NRCS execution of enrollment agreements or contracts for standard ACEP-ALE enrollments or postclosing transfer buy-protect-sell transactions, prior to issuing payment for preclosing transfer buy-protect-sell transactions, or prior to NRCS execution of any documents required for landowner changes that occur after enrollment and prior to easement acquisition (see subpart F, section 528.51D of this part). The AGI determinations, including any AGI waiver determinations, used for the purposes of enrollment remain in effect for the

duration of the enrollment unless there is a change in land ownership, the enrolled area, or the treatment of the land under the agreement or contract that would affect the AGI determination, including the applicability of an approved AGI waiver. Furthermore, NRCS may not approve waivers of the AGI limitation after the enrollment agreement or contract has been executed by NRCS except for preclosing transfer buy-protect-sell transactions or changes in land ownership as described in subpart F, section 528.51(D), or for changes to the enrolled area or approved land treatment that are within the scope of the existing agreement or contract and warrant consideration.

Note: AGI waivers are not available for parcels enrolled under ACEP-ALE agreements originally executed under the 2014 Farm Bill.

- (7) The AGI eligibility determination for all landowners of record, including documentation related to AGI waivers or commensurate reductions, must be documented in the easement business tool (e.g., NEST) and the individual easement case file.

C. Conservation Compliance

- (1) NRCS must confirm based on documentation from FSA that all landowners of record (persons and legal entities) have filed Form AD-1026, and are compliant with the HEL/WC provisions of the Food Security Act of 1985.
- (2) Through operation of “affiliated persons” under 7 CFR Section 12.8, all landowners of record are required to be in compliance with both the HEL and WC provisions for the application to be considered eligible for enrollment and payment. If any landowner listed on the deed is ineligible, the parcel is ineligible.
- (3) If the landowner is a legal entity, the legal entity must be HEL and WC compliant, and required members of the legal entity must also be in compliance (see subpart U of this part for the ACEP landowner eligibility matrix). If any member of a legal entity that requires member eligibility is not in compliance with the HEL and WC provisions, the parcel is ineligible.
- (4) The fiscal year for which the landowners must be HEL/WC eligible and the timing of the determination is based on the transaction type as identified in paragraph A(4) above and as described in this paragraph C. A determination of HEL and WC eligibility must be—
 - (i) For standard ACEP-ALE enrollments and postclosing transfer buy-protect-sell transactions, be made for the fiscal year the parcel is identified as selected for funding on an attachment to the ALE-agreement and prior to the execution of such enrollment agreements or contracts and again prior to payment of the Federal share for the fiscal year in which payment will be issued.
 - (ii) For preclosing transfer buy-protect-sell transactions, be made for the fiscal year the fee title is conveyed from the eligible entity to the landowner (qualified farmer or rancher) and again prior to payment of the Federal share for the fiscal year in which payment will be issued.
 - (iii) Updated as specified in this paragraph C and in subpart F, 528.51D of this part for any change in ownership, change in legal entity membership or configuration, or other triggering event that occurs prior to closing.
- (5) If a landowner regains compliance with the HEL and WC provisions, a new application may be submitted.

528.36 Participation in Other USDA Programs

Land enrolled in ACEP-ALE may be enrolled in other USDA conservation programs provided the eligibility requirements of the other programs are met, including the following:

- (1) Agricultural Management Assistance Program (AMA).
- (2) Regional Conservation Partnership Program (RCPP), except RCPP easements that would address the same objectives and purposes as ACEP-ALE.
- (3) Conservation Reserve Program (CRP) rental contracts.
- (4) Conservation Reserve Enhancement Program (CREP) long-term contracts or other noneasement enrollment types.
- (5) Conservation Stewardship Program (CSP).
- (6) Environmental Quality Incentives Program (EQIP).
- (7) The ACEP-WRE component, the Emergency Watershed Program – Floodplain Easement Program (EWP-FPE), or the Healthy Forest Reserve Program (HFRP) provided any necessary subordinations or releases are obtained pursuant to the applicable authorities and procedures for easement administration actions and the easement valuation accounts for existing deed or land use restrictions.